INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutory provision believed to sustain jurisdiction	1
Statutes involved	2
Dates involved	4
History of the case	4
Nature of case and substantiality of questions involved	6
Conclusion	12

Table of Cases Cited

Bethlehem Steel Co. v. *New York Labor Relations Board*, No. 55, October Term, 1946, decided April 7, 1947	8
Bourland, Ex parte, 132 Tex. Cr. Rep. 434, 105 S. W. 251	10
Chittenden, Ex parte, 124 Tex. Cr. Rep. 228, 61 S. W. (2d) 1008	
Compton v. *Alabama*, 214 U. S. 1	9
Connally v. *General Construction Co.*, 269 U. S. 385	11
Doo Woon, In re, 18 Fed. 898	9, 10
Hagan, Ex parte, 295 Mo. 435, 245 S. W. 336	
Harris, In re, 309 Mass. 180, 34 N. E. (2d) 504	8
Hart, In re, 64 Fed. 249	9, 10
Hawk, Ex parte, 321 U. S. 114	12
Hogan v. *O'Neill*, 255 U. S. 52, 41 Sup. Ct. 222, 65 L. Ed. 497	7, 9
Holiday v. *Johnston*, 313 U. S. 342	12
Innes v. *Tobin*, 240 U. S. 127	7
Kentucky v. *Dennison*, 24 How. 66	7, 8
Lanzetta v. *New Jersey*, 306 U. S. 451	11
Lewis, Ex parte, 75 Tex. Crim. Rep. 320, 170 S. W. 1098	9
Morgan, Ex parte, 20 Fed. 298	9, 10

Page

Owen, Ex parte, 10 Okla. Cr. 284, 136 P. 197 ..... 9, 10
Roberts v. *Reilly,* 116 U. S. 80 8
U. S. ex rel. Darcy v. *Superintendent of County Prisons,* 111 F. (2d) 409 8
U. S. ex rel. Silver v. *O'Brien,* 138 F. (2d) 217 8

STATUTES CITED

Alabama Code of 1940, Titl. 15, Sec. 50 6
Arizona Code of 1939, Sec. 44-3603 6
Arkansas, Pope's Dig., Sec. 6083 6
California Penal Code, Sec. 15482 6
Constitution of the United States, 14th Amendment
Delaware Laws 1937, C. 213, Sec. 3 6
Florida Laws, c. 20460, Sec. 3 (Fla. Stat. Ann. 941.03) 2
Hawaii Rev. Laws 1945, Sec. 10633 6
Idaho Code of 1932, Sec. 19-4603 6
Indiana, Burns Ann. Stat., Sec. 9-421 6
Judicial Code, Section 237 (28 U. S. C. 344) 2
Kansas, Gen. St. Ann., 1943 Supp., Sec. 62-729 6
Maine Rev. Stat. of 1944, c. 139, Sec. 3 6
Maryland Code of 1939, Art. 41, Sec. 15 6
Massachusetts, Ann. Laws Supp., C. 276, Sec. 14 6
Michigan, Comp. Laws Suppl. 1490, Sec. 17513-3 6
Minnesota, M.S.A. Sec. 629.01 6
Montana, Rev. Code Supp., Sec. 12428-3 6
Nebraska, Rev. Stat. 1943, Sec. 29.703 6
New Hampshire, Rev. Laws 1942, c. 437, Sec. 3 6
New Jersey, N.J.S.A. 2.185-11 6
New Mexico, 1941 Comp., Sec. 42-1903 6
New York, McKinney's Crim. Code, Sec. 830 6
North Carolina, Gen. Stat. 1943, Sec. 15-57 6
Ohio Gen. Code, Sec. 109-3 6
Oregon, O.C.L.A., Sec. 26-2603 6
Penal Code of Michigan, Section 505 (Mich. Stat. Ann. 28.773) 3
Pennsylvania, Purdon's P.S.A., Sec. 191.3 6
South Dakota Code, Sec. 34.1703 6
Uniform Criminal Extradition Act, Sec. 3 (9 Uniform Acts Anno. 175) 7

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United States Code:

	Page
Title 18, Sec. 662	3
Title 28, Sec. 451, 452	12
Utah Code of 1943, Sec. 105-56-29	6
Vermont, P. L., Sec. 2508	6
Virginia Code of 1942, Sec. 5070.c	6
West Virginia Laws, 1937, c. 42	6
Wisconsin, Stat. 1945, Sec. 364.03	6
Wyoming, Comp. Stat. 1945, Sec. 10-2403	6

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 257

STATE OF FLORIDA ex rel. WILLIAM H. McKEIGHAN,

Appellant,

vs.

JIMMY SULLIVAN, as Sheriff of Dade County, Florida,

Appellee

JURISDICTIONAL STATEMENT

STATEMENT AS TO THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES TO REVIEW ON APPEAL THE JUDGMENT IN QUESTION.

The appellant, having presented its petition for the allowance of an appeal in this cause to the Supreme Court of the United States, files this statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

(a) Statutory Provision Believed to Sustain Jurisdiction

This appeal is prosecuted from a final judgment of the Supreme Court of the State of Florida, which affirmed the decision of the Circuit Court of the Eleventh Judicial Cir-

cuit in and for Dade County, Florida, remanding appellant McKeighan to the custody of appellee Jimmy Sullivan, Sheriff of Dade County, Florida, under a rendition warrant of the Governor of the State of Florida issued pursuant to an interstate rendition requisition of the Governor of the State of Michigan. The judgment of the Supreme Court of Florida, which is the highest court of the State of Florida, was entered April 1, 1947. A petition for rehearing was denied by the Supreme Court of Florida on April 21, 1947. No opinion was written by the court on either its decision of April 1, 1947, or its decision denying the petition for rehearing. On April 23, 1947, the court granted a stay of execution and enforcement of its judgment, for ninety days from April 21, 1947, so that review by this Court might be sought.

The jurisdiction of this Court rests upon the provisions of Section 237 of the Judicial Code, as amended (28 U. S. C. 344), on the ground that in this cause the validity of certain State statutes was drawn in question, as repugnant to the Constitution and to the laws of the United States, and the decision of the Supreme Court of Florida was in favor of the validity of those statutes.

(b) Statutes Involved

The statutes involved in this cause are as follows:

(1) The extradition statute of the State of Florida, Florida Laws c. 20460, Sec. 3 (Fla. Stat. Ann. 941.03), which reads:

> "No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging, except in cases arising under Sec. 941.06, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by an authenticated copy

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of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of a warrant supported by an affidavit made before a committing magistrate of the demanding state; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand."

The Florida statute is the Uniform Criminal Extradition Act, with minor local changes.

(2) Section 505 of the Penal Code of the State of Michigan (Mich. Stat. Ann. 28.773), which reads:

"Any person who shall commit any indictable offense at the common law, for the punishment of which no provision is expressly made by any statute of this state, shall be guilty of a felony, punishable by imprisonment in the state prison not more than five years or by a fine of not more than two thousand five hundred dollars."

(3) The federal statute governing extradition (18 U. S. C. 662), which reads:

"Whenever the executive authority of any State or Territory demends any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committeed treason, felony, or other crime, certified as authentic by the governor

or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory. (R. S. Sec. 5278.)"

(c) Dates Involved

The final judgment of the Supreme Court of the State of Florida was rendered on April 1, 1947. A petition for rehearing was denied on April 21, 1947.

The petition for appeal in this cause was presented and filed on July 9, 1947.

(d) History of the Case

This case arose when the appellant McKeighan was arrested and placed in custody under the alleged authority of a rendition warrant issued by the Governor of Florida, pursuant to an interstate rendition requisition of the Governor of Michigan. The Michigan requisition was supported by an information, in conformity with the law of Florida. On October 6, 1946, appellant filed a petition for a writ of habeas corpus in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, asking that he be discharged from custody on the ground that he was being unlawfully detained by the appellee Sheriff and that the appellee was holding him without legal authority. On October 15, 1946, the Circuit Court entered an order denying

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the motion that appellant be discharged, and ordering the appellant remanded to the appellee for custody. From that order an appeal was taken, on the same day, to the Supreme Court of the State of Florida.

The Supreme Court of Florida, on April 1, 1947, entered an order affirming the judgment of the Circuit Court. No opinion was written. On April 15, 1947, a petition for rehearing was filed by appellant, and on April 21, 1947, the petition for rehearing was denied, again without opinion. On April 23, 1947, the Supreme Court of Florida entered an order staying execution of its judgment pending review by this Court.

The grounds upon which appellant sought discharge from custody were that (1) the Florida statute governing extradition proceedings is invalid because it is in conflict with the federal statute governing extradition; (2) the information, upon which the Florida rendition warrant and the Michigan requisition are founded, is without legal effect because it rests upon a Florida statute in conflict with a federal statute, and a Michigan statute repugnant to the due process clause of the Fourteenth Amendment to the Constitution of the United States; and (3) the warrant upon which appellant is held is fatally defective under the federal statute governing extradition, in that it fails to identify with particularity the documents relied upon.

The validity of the Michigan statute was challenged in the trial court orally by counsel for appellant (Transcript of proceedings, pages 22, 23, 24), was preserved in the Ninth Assignment of Error of appellant under a general challenge to constitutionality (Record, p. 119), and was argued at length in the brief in the Supreme Court of Florida (Brief, pp. 85-108). The point was again specifically set forth in paragraph III of the petition for rehearing. The trial court's opinion did not specifically refer to this issue. The

Supreme Court of Florida wrote no opinion on either the original appeal or the petition for rehearing.

The invalidity of the Florida extradition statute, as in conflict with the federal extradition statute, was raised in the petition for rehearing. The Supreme Court of Florida wrote no opinion.

The challenge to the rendition warrant was raised in the petition for rehearing. The Supreme Court of Florida wrote no opinion.

(e) Nature of Case and Substantiality of Questions Involved

Appellant has challenged in this case the validity of two important state statutes, and has in addition raised important points going to the sufficiency of basic documents under the federal extradition statute. The Florida extradition statute, in particular, involves an issue that requires decision by this Court, since the Florida statute is (with only slight local modifications) the Uniform Criminal Extradition Act, which has been adopted by 31 states and Hawaii.[1] The issue raised here by appellant—whether Section 3 of the Uniform Criminal Extradition Act is in conflict

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[1] Alabama (Code 1940, Tit. 15, Sec. 50); Arizona (Code 1939, Sec. 44-3603); Arkansas (Pope's Dig. Sec. 6083); California (Penal Code, Sec. 15482); Delaware (Laws 1937, c. 213, Sec. 3); Hawaii (Rev. Laws 1945, Sec. 10633); Idaho (Code 1932, Sec. 19-4603); Indiana (Burns, Ann. Stat., Sec. 9-421); Kansas (Gen. St. Ann., 1943 Supp., Sec. 62-729); Maine (Rev. Stat. 1944, c. 139, Sec. 3); Maryland (Code 1939, Art. 41, Sec. 15); Massachusetts (Ann. Laws Supp., c. 276, Sec. 14); Michigan (Comp. Laws Suppl. 1490, Sec. 17513-3); Minnesota (M.S.A. Sec. 629.01); Montana (Rev. Code Supp., Sec. 12428-3); Nebraska (Rev. Stat. 1943, Sec. 29.703); New Hampshire (Rev. Laws 1942, c. 437, Sec. 3); New Jersey (N.J.S.A 2.185-11); New Mexico (1941 Comp., Sec. 42-1903); New York (McKinney's Crim. Code, Sec. 830); North Carolina (Gen. Stat. 1943, Sec. 15-57); Ohio (Gen. Code, Sec. 109-3); Oregon (O.C.L.A. Sec. 26-2603); Pennsylvania (Purdon's P.S.A. Sec. 191.3); South Dakota (S. D. Code, Sec. 34.1703); Utah (Code 1943, Sec. 105-56-29); Vermont (P. L., Sec. 2508); Virginia (Code 1942, Sec. 5070.c); West Virginia (Laws 1937, c. 42); Wisconsin (Stat. 1945, Sec. 364.03); Wyoming (Comp. Stat. 1945, Sec. 10-2403).

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with the federal statute, in permitting a requisition to be based upon an information supported by an affidavit—has never been passed upon by this Court, nor has this Court ever passed upon whether an information, such as is here involved, is sufficient under the federal statute, whether or not it is authorized by state law. The use of an information in extradition proceedings, therefore, raises two distinct questions never decided by this Court:

(1) Where a state statute, such as the Uniform Criminal Extradition Act, authorizes the use of an information supported by an affidavit, is that statute in conflict with the federal statute, which requires either an indictment or an affidavit made before a magistrate?

(2) Is an information sufficient, under the federal extradition statute, to support an interstate rendition requisition, whether or not an information is authorized by state law?

That the use of an information is of at least dubious legality was recognized by the framers of the Uniform Act and was frankly stated. A footnote to Section 3 of the proposed Uniform Act, found in *9 Uniform Acts Annotated 175*, states:

> "The recognition of informations in states which allow them is probably supported by *Hogan vs. O'Neill*, 1921, 41 S. Ct. 222, 255, U. S. 52, 65 L. Ed. 497."
>
> *Hogan vs. O'Neill*, the case cited, is quite obviously irrelevant.

The federal statute, which is an implementation of Article IV, Section 2 of the Constitution, is an action of the federal government designed to make uniform, in all the states of the Union, the method of effecting interstate rendition of fugitives. *Innes* vs. *Tobin* 240 U. S. 127; *Kentucky* vs. *Dennison*, 24 How. 66. The extradition clause of

the Constitution is not self-executing but is made effective by act of Congress. *Roberts* vs. *Reilly*, 116 U. S. 80; *U. S. ex rel. Darcy* vs. *Superintendent of County Prisons*, 111 F. (2d) 409; (C. C. A. 3rd, 1940): *U. S. ex rel., Silver* v. *O'Brien*, 138 F. (2d) 217 (C. C. A. 7th, 1943). In an attempt to make uniform the types of documents upon which the important act of extradition might be based, the federal statute designated (a) an indictment, or (b) an affidavit made before a magistrate. It must be assumed that in doing so, Congress considered that these documents were of sufficient dignity to justify interstate rendition, while other documents might not be; and it would appear that in so specifying, Congress intended to occupy the field. Only by occupying the field *could* Congress establish a uniform system of extradition; and the very point of the federal legislation was that methods of proof should not be left to the states, which might legislate differently. *Kentucky* vs. *Dennison*, 24 How. 66. It is thus obvious that the several states have not the power to establish, though it be under the name of Uniform Act, a "uniform" method of extradition which is at variance with the mandate of Congress. And the fact that the federal statutes does not expressly bar state action is immaterial. "It long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting." *Bethlehem Steel Co.* v. *New York Labor Relations Board*, No. 55, October Term, 1946, decided April 7, 1947. Thus the only function of state legislation on interstate rendition can be to aid the federal statute. *In re Harris*, 309 Mass. 180, 34 N. E. (2d) 504 (1941).

That an information, such as forms the basis for rendition in this case, does not satisfy the federal extradition statute, has been held a number of times by federal and

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state courts. *Ex Parte Morgan*, 20 Fed. 298 (D. C. Ark. 1883); *In Re Hart*, 63 Fed. 249 (C. C. A., 4th 1894); *Ex Parte Owen*, 10 Okla. Cr. 284, 136 P. 197 (1913); *Ex Parte Lewis*, 75 Tex. Crim. Rep. 320, 170 S. W. 1098 (1914); *Ex Parte Chittenden*, 124 Tex. Cr. Rep. 228, 61 S. W. (2d) 1008, 1933). These cases all arose before the passage of the Uniform Act. But of course the adoption of a state statute adds no authority to a mode of extradition not sanctioned by Congress. It is compliance with the federal statute alone that gives to the Executive authority of the asylum state the power to issue a warrant of arrest. *Compton* vs. *Alabama*, 214 U. S. 1.

In this connection appellant has challenged also the sufficiency of the form of the documents here relied upon, aside from the Florida statute. In interstate rendition, the face of the warrant must show conformity to the federal statute. *Ex Parte Hagan*, 295 Mo. 435, 245 S. W. 336 (1922). The warrant of the Executive authority of the asylum state must set forth and recite with particularity the indictment or affidavit on which it is based. *In re Doo Woon*, 18 Fed. 898 (D. C. Ore — 1883). The warrant in this cause, under which appellant is held in custody, recites that the Executive authority of Michigan has filed with the Executive authority of Florida "a copy of Affidavit made before a Michigan magistrate, and Information found." This does not state which of these documents is relied upon, and, if referring to an affidavit, does not specify any particular affidavit. This record contains eleven different affidavits. The federal statute requires further that the document relied upon be "certified as authentic by the governor or chief magistrate" of the demanding state. The warrant in this cause asserts that it is based on an "Affidavit made . . . and information found" which "is" certified as authentic by the Executive authority of Michigan, thus failing to specify on its face the document

meeting the federal requirement. These points, while formal in nature, go to the jurisdiction of the Executive authority of the asylum state. *In re Doo Woon,* 18 Fed. 898 (D. C. Ore. 1883); *Ex Parte Morgan,* 20 Fed. 298 (D. C. Ark. 1883). The federal statute must be strictly construed as to these requirements. *Ex Parte Owen,* 10 Okla. Crim. Rep. 284, 136 P. 197, (1913); *Ex Parte Hart,* 63 Fed. 249 (C. C. A. 4th 1894). Proof may not be offered to show supporting documents; the face of the warrant must specify satisfactory papers. *Ex Parte Bourland,* 132 Tex. Cr. Rep. 434, 105 S. W. 251 (1937). As a matter of actual fact, the transcript of proceedings in the trial court (Record, pp. 15, 16, 22-24) and the Order of the trial court (Record p. 26) show that it is the *information* which is relied upon by the demanding authorities, but the warrant fails to be specific.

The third point raised by appellant is the invalidity of the Michigan statute (Section 505 of the Michigan Penal Code, set out *supra* under "Statutes involved"). This statute purports to make any indictable offense at the common law," for which no express statutory punishment is provided, a *felony* punishable by imprisonment for five years or by a fine of not more than $2500. Appellant, in the trial court and in the Supreme Court of Florida, challenged this statute as in violation of the due process clause of the Fourteenth Amendment to the Constitution.

Appellant contends that this criminal statute, a catch-all for the myriad common law crimes which may turn up by court decision at any time, is plainly in violation of the Fourteenth Amendment in that it fails to lay down an ascertainable standard of punishment, it fails to inform citizens of the acts for which punishment is provided, and it involves a patent absurdity, in that it requires a conspiracy to commit a *misdemeanor* to be punished as a *felony.* That is precisely the situation in this cause. The appellant is

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charged with conspiracy to keep and maintain for hire, gaming rooms, gaming tables and devices, and games of chance, in violation of Sections 302-306 of Act 328 of the Public Acts of 1931 (Mich. Stat. Am. 28.534-28.538). In every one of these Sections, the completed act is declared to be a misdemeanor. But appellant is charged, not with having performed these acts, but with having *conspired* to do so. And, since no statute of Michigan declares such a conspiracy unlawful, the State calls this a common law conspiracy; but since no punishment is prescribed for such a conspiracy, the State then resorts to Section 505 for the source of the crimes here charged, on the ground that this conspiracy is an "indictable offense at the common law."

Of course a basic tenet of constitutional law is that a penal statute must be sufficiently definite to inform persons of the nature of the crime. *Lanzetta* v. *New Jersey*, 306 U. S. 451, and cases cited. A statute "which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." *Connally* v. *General Construction Co.*, 269 U. S. 385, 391.

Without examining in any way the criminal law of Michigan, it is apparent that Section 505 contemplates that Michigan criminal law is partly statutory and partly common law. This alone is a wide range in which a citizen is held to be responsible, but Section 505 extends the felony punishment to "any indictable offense at the common law" for which no statutory punishment is expressly prescribed. This requires first a survey of the common law, to ascertain indictable offenses, next a survey of statutory punishment which may or may not have been prescribed, and finally a reference back to Section 505. Surely a legislature may not pick up loose ends by enacting a sweeping criminal

statute of this uninformative and vague nature. Due process of law requires a more ascertainable standard.

(f) Conclusion

This cause involves not only two important State statutes, one of them now in force in 32 American Jurisdictions, as to which important Federal questions are raised; it involves also the extraordinary writ of *habeas corpus*, concerning which courts are not eager to find formal defects or to scrutinize it "with technical nicety." *Holiday* v. *Johnston*, 313 U. S. 342, 350. This Court itself has jurisdiction to issue a writ of *habeas corpus* "for the purpose of an inquiry into the cause of restraint of liberty," 28 U. S. C. 451, 452, and has power to do so, with regard to appellant in this cause, at any time. Thus the Federal questions raised here are within the present competency of this Court and ought to be considered by it without regard to technicalities of pleading, if in fact the Court concludes that the questions are substantial. Present consideration of the questions would avoid, both for this Court and for appellant, the necessity of appellant seeking review on a new writ of *habeas corpus*. *Cf. Ex Parte Hawk*, 321 U. S. 114. It is therefore urged that this Court consider and pass upon the Federal questions presented in this appeal.

Respectfully submitted,

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